NEGRO DISFRANCHISEMENT AS IT AFFECTS THE WHITE MAN

AN ADDRESS

BY

ALBERT E. PILLSBURY
OF BOSTON

REPRINTED FROM THE
PROCEEDINGS
OF THE
FIRST NATIONAL NEGRO CONFERENCE
HELD IN NEW YORK CITY, MAY 31, JUNE 1, 2, 1909
BY THE
NATIONAL NEGRO COMMITTEE
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HON. ALBERT E. PILLSBURY

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The view of Negro disfranchisement and its results which I shall present is not new to many in this audience, but it has never been pressed as it ought to be upon the attention of the country. The indifference with which the people have suffered the process of disfranchisement to go on, without a hand and with hardly a voice raised against it, can be accounted for only upon the belief that they do not understand what it means. I object to it not merely because the Negro is disfranchised in certain states, but because the scheme is a fraud upon the whole country, directly impairing the political rights of every other state, and of every voter in every other state, the white as well as the black.

If it stopped with fraudulent disfranchisement of the Negro, the case would be bad enough, and the public apathy would still be discreditable, though perhaps not unaccountable. It does not stop there. It has multiplied by two or more the political power, in the Federal government, of every white voter in the disfranchising states, and it has to the same extent disfranchised every voter in every other state. It is not merely a question of Negro suffrage, or Negro equality. It is a question of the equality of white men. The question now is

whether every white man, in any state, shall be politically the equal of every other white man, in any other state. This question does not belong to any section, but to the whole country. In the face of the claim that Negro suffrage is the affair of the South, with which no other people have any business to interfere, the course of the South has made it the affair of every white citizen in the other thirty-six states who wishes to preserve and defend his own political rights.

Let us first dispose of one or two delusions. They attempt to justify the disfranchisement of the Negro upon various false pretenses, so often repeated and so little denied that they have come to be generally believed. It has been long and loudly asserted that Negro suffrage was forced upon the South. It is not true, and it was never true. The Thirteenth Amendment makes the Negro a freeman, and nothing more. The Fourteenth Amendment makes him a citizen of the United States, with the personal rights of a citizen, and nothing more. The Fifteenth Amendment entitles him to be treated, in respect of the suffrage, only as other men of the same standing or character are treated, and nothing more. The federal law does not make a single Negro a voter, in any state of the Union. The extremest requirement of it is only that the color of his skin shall not disqualify him, if he is otherwise qualified under such laws as any state sees fit to adopt.

Neither is it true that Negro suffrage means Negro control or domination, in any state of the Union. There is not a state in which impartial suffrage, honestly administered, would endanger white supremacy for a day. These two assertions, iterated and reiterated as they have been, and relied upon to justify disfranchisement and reconcile the country to the fraud, are equally and absolutely without foundation.

This is so well known that it cannot be denied. But

when they complain that Negro suffrage was forced upon the South, they will tell you that they mean the forcing of it upon the South by the Reconstruction Acts. Is their case any better here? The Reconstruction Acts did not force Negro suffrage upon the South. They offered restoration to the political rights and privileges forfeited by armed rebellion, on condition that suffrage should be impartial among all citizens of the United States. In view of the penalties which might have been exacted, these terms, unexampled in history for their mildness, do not seem severe. So far as the federal law goes, there has never been a day when any state of the Union could not, by impartial tests applied alike to all citizens, exclude from its suffrage the ignorant, the criminal, the depraved, or even the poor. But the history of the country from 1867 down to this time shows that even these terms, so far as accepted by the white South, were accepted with the fixed purpose to disregard them, so that the Negro should not be allowed to vote. The first experiments in Negro suffrage were met and resisted by armed violence, until it was perceived that fraud is less dangerous and more politic than murder. Then the tissue ballot appeared, and other similar devices. The tissue ballot has now developed into the "grandfather" constitution. Fraud has done its perfect work.

It all comes to this. As a Negro, they like him; indeed they must have him. As a man, a citizen, or a voter, they will have none of him. So far as the suffrage is concerned they have made good this determination, by open disregard and defiance of the Fourteenth and Fifteenth Amendments. This is simply rebellion against the government of the United States, as in 1861, the instrument employed being fraud instead of force. In this, as in all that I say, I refer only to the states where the crime is flagrant, and I acknowledge, with

grateful appreciation, the attitude of a minority of the best citizens even in these states, who see the folly and the wickedness of fraudulent disfranchisement of the Negro and have tried to stay its mad career.

While the Fifteenth Amendment gave the Negro nothing but the right to be treated, according to his merits, as other men of equal merit are treated, the white South was even more unwilling to accord him impartial treatment under the Fifteenth Amendment than it was to accept him as a citizen under the Fourteenth, or as a freeman under the Thirteenth. They have nullified, to a substantial extent, all three of the War Amendments. In most of the southern states the Negro has been despoiled, by one sinister device or another, of a substantial share even of the personal liberty supposed to be secured to him by the Thirteenth Amendment. In but few if any of these states is he accorded the privileges of a citizen or the equal protection of the laws, supposed to be secured to him by the Fourteenth Amendment. And now, by a series of fraudulent enactments which began with Mississippi in 1891 and running through and around the "black belt" has finally embraced, actually or practically, every state that seceded from the Union in 1861, the Negro is eliminated from their political system almost as completely as though he did not exist.

That this is a fraud does not need to be asserted. It is self-evident, and is admitted. The disfranchising constitutions, even of the "grandfather" type, are fair enough upon their face, revealing to the eye no open discrimination between the races. So much had to be conceded to the Fifteenth Amendment. But every one of them is calculated, intended and administered, to exclude the Negro from the suffrage, whatever his character and qualifications, while admitting to it every white man, however ignorant, worthless or depraved. It is

common knowledge that many of the most distinguished personages concerned in the movement, more candid if less discreet than the rest, have confessed this charge and openly exulted in it.

A new feature has just appeared in the disfranchising process which may be of some significance. We read in the newspapers the other day that the legislature of Florida is proposing to write the word "white" plainly into the constitutional suffrage qualification of that state, openly discarding even the pretense of impartiality between the races which thinly veils the fraud in other states. This looks as though the white South is now confident that the country has abandoned the Negro and that the Fifteenth Amendment may be openly repudiated. The Mississippi senator who appears to be active in the Florida movement probably knows, if the Florida legislature does not, that the Supreme Court has often declared the word "white," if found in the suffrage laws of a state, to be effaced and annulled by the Fifteenth Amendment, of its own force. In view of this, it is difficult to believe that they really expect to do this thing effectively. Whether they think they have discovered a new device, or what the particular purpose is, I do not undertake to say. It may be nothing but a mere piece of bravado, but it needs watching.

Now let us see how disfranchisement of the Negro affects the white man. The Fourteenth Amendment apportions representatives in Congress and presidential electors among the states in proportion to their population, and prescribes that if the suffrage is denied or abridged by a state to any male citizens of the United States of voting age, its representation shall be reduced in the same proportion. At least ten southern states, by fraud or intimidation, under the forms of law or otherwise, have practically or actually disfranchised the Negro. These ten states had by the census of 1900 a

population of 15,926,955, of which 9,349,622 are white and 6,565,894 colored. They have 3,675,454 male citizens of voting age, of whom 2,238,720 are white and 1,436,734 colored. The disfranchised colored citizens, a million and a half in round numbers, represent a colored population of six and a half millions. These ten states elect the full number of 82 representatives in Congress, based upon their whole population, and the same number of presidential electors, who represent 2,238,720 white voters. This is an average of 27,301 voters to each representative and elector. In the other thirty-six states of the Union, 17,122,940 voters elect 309 representatives and presidential electors, an average of 55,414 voters to each representative and elector. This is more than double the number which exercises the same power in the disfranchising states. A white vote in these states outweighs, in the federal government, two votes of any color in the other states of the Union. A white voter in these states goes to the polls with somewhat more than double the federal power of any voter in the other states.

In fact, the situation is worse than this. The actual voting oligarchy in the disfranchising states is but a small fraction even of the white electorate. I have not attempted to compile any recent figures, but they have often been published. For example, it is said that the congressional vote of a single district in Iowa exceeds the vote which elects the whole congressional delegation of Louisiana; that the average congressional vote in each district in Ohio exceeds the whole congressional vote of Mississippi; and that the vote cast in electing ten congressmen in Wisconsin is more than three times as large as that cast in electing twenty congressmen in South Carolina, Louisiana and Mississippi. Any white voter, in any of the thirty-six states where citizens of the United States are allowed to vote, may figure out for him-

self, at his leisure, what particular fraction of his own vote the disfranchising states allow him to cast in the choice of the federal government.

One of the sorest spots in the old slave Constitution was the political representation of three-fifths of the slaves, giving the South that undue share of political power. The Fourteenth Amendment was intended to set this right, and to restore and maintain for all time an honest balance of political power between the states. We are now so much worse off than we were then, that whereas but three-fifths of the Negroes were then counted in the basis of representation, the whole are now counted and represented, and the whole political power belonging to about sixteen millions of people is exercised by a white electorate representing about nine millions. Instead of carrying us forward to political equality, the actual results of the war have carried us backward to more inequality.

All this has been done in plain and open disregard and violation of the Fourteenth and Fifteenth Amendments. It has passed into a political truism that the three amendments of the Constitution were the whole fruits of the war. We have suffered ourselves to be robbed of the fruits, by a new rebellion against the federal government, in which the states of the late Confederacy have taken and hold more political power than they formerly had by virtue of slavery itself. In the recent bill of Congressman Bennet, of New York, to enforce the representation clause of the Fourteenth Amendment, based upon the figures of the census of 1900, it appears that the ten disfranchising states there dealt with, now represented on the basis of the whole population by 82 congressmen and the same number of electors, are entitled to but 50 congressmen and electors, and that 32 representatives and electors of these states are now voting in Congress and in the election of president and

vice-president without right, and in open violation of the federal Constitution.

It was long hoped, and perhaps believed, that the judicial remedy for disfranchisement in violation of the Fifteenth Amendment would be effective. One mistaken view of the judicial remedy has obtained some currency and ought to be corrected. Mr. Blaine seems to have thought, when he wrote his Twenty Years of Congress, that it must be the only remedy. He there expressed the view that the Fifteenth Amendment, directly forbidding discrimination against the Negro in the suffrage, superseded the representation clause of the Fourteenth which appears to permit it at the price of reduced representation; that as the Fifteenth wholly forbids denial of the suffrage on the ground of color, a state can no longer deny it, or be found or held to have denied it, on that ground; and that the only thing to be done upon violation of the Fifteenth Amendment is to appeal to the courts. In this he was plainly wrong, and his view has not been and is not to be accepted. The Fourteenth Amendment is not a permission to the states to deny the suffrage to any class of citizens. Suffrage, in general, is the affair of the states. They need no permission of the federal government to regulate it. This Amendment says to the states: If the Negro is not admitted to the suffrage, the Negro shall not be counted in the basis of representation. The Fifteenth Amendment says to the states: While you may regulate the suffrage to suit yourselves, you shall not deny it to the Negro merely because he is a Negro. This does not supersede the other provision, first, because there is no inconsistency between the two, the later being cumulative and supplemental, not repugnant, to the other; second, because to forbid an act does not repeal a penalty otherwise laid upon it; and third, because the judicial remedy, under the Fifteenth Amendment, may be sought by

any aggrieved citizen, and perhaps only by a citizen, while the remedy by reduction of representation, under the Fourteenth Amendment, is a public remedy, enforceable only by Congress, which the additional private remedy under the Fifteenth cannot be held to supersede or disturb.

And further, Congress is expressly empowered to enforce the Fifteenth Amendment, by "appropriate" legislation. No legislation can be more appropriate than to reduce the representation of a disfranchising state, in pursuance of the plain mandate of the Fourteenth Amendment that its representation "shall be reduced" in such a case. In framing the Fifteenth Amendment, it may have been foreseen, as the case has actually turned out to be, that the suffrage might be denied or abridged by some device which could not be brought to the judicial test, or that the court might hold the political remedy to be exclusive. It may be, in theory, that a state is incapable of doing what the federal Constitution forbids it to do, so that, abstractly, a state cannot now deny or be found to have denied the suffrage on the sole ground of color, as the attempt to do it is legally void. But this is mere casuistry. The law knows no such refinement as to assume that a forbidden act cannot be done because it is forbidden. Such an assumption would nullify all penal legislation. It is common knowledge that acts forbidden by law are done, and punished, every day. The Amendments deal with facts, not theories, and Congress may deal with the facts, as it finds them to be.

The two Amendments must be read together. Taken together, they mean that a state shall not deny the suffrage to any citizen of the United States on the sole ground of race, color or previous servitude, but if actually denied, upon this or any other ground, it shall be at the cost of reduced representation.

It is now familiar that the Supreme Court, in the few

cases which have reached it, has avoided the direct question of the conflict of the disfranchising constitutions with the Fifteenth Amendment. The scheme is so cunningly contrived as to make it difficult or impossible to present an effective case. The court has not yet been squarely faced with the main question, and has plainly shown a reluctance to meet it. The nearest approach was in the Alabama case,* in 1903, where the subject is briefly surveyed, and a majority of the judges declares the court incompetent to give the desired relief. If this declaration was extra-judicial, as it may be regarded, it is perhaps the more significant for that reason, whatever may be said of its propriety. In this and other cases the judges must have perceived that if the question is forced upon the court, the result will be either to sustain a patent and colossal political fraud, or to overturn the suffrage systems of states by judicial decree. Rightly or wrongly, they shrink from this alternative. I think that the Alabama case must be taken as a final refusal to pass upon the general validity of the disfranchising constitutions if the question can possibly be avoided.

But this is not the whole of the Alabama case. The court concludes with a pregnant declaration that relief from such a political wrong, done by a state or its people, must be given by them, "or by the legislative and political department of the government of the United States." That there is a complete political remedy must have been apparent to the court, and it cannot be without significance that the court points directly to the political remedy, in turning away from the subject.

While the judicial remedy for disfranchisement has thus far proved delusive, there is complete power in Congress and the Executive to enforce political equality

*Giles *v.* Harris, 189 U. S. 475.

among the citizens of the United States if disposed to enforce it, and this not merely under the Fourteenth but under Section 2 of the Fifteenth Amendment itself, which declares, as in the other war Amendments, that "the Congress shall have power to enforce this Article by appropriate legislation."

This clause of the Amendment is of the same force and significance as the prohibitive clause. Plainly the Constitution has not left its enforcement to the courts. Congress has express power to "enforce" its provisions, by "appropriate" legislation. This must be held a plenary and effective power, adequate to the complete enforcement of the prohibition of the first section. What is "appropriate" legislation for this purpose? I have suggested one example of it. We have some further light upon this question. In the Civil Rights cases, and others, the court has held that the similar section of the Fourteenth Amendment does not authorize Congress to substitute for unconstitutional laws of a state a new code, of its own making, but only to enact "corrective legislation, that is, such as may be necessary and proper for counteracting such laws as the states may adopt or enforce, which, by the Amendment, they are prohibited from making or enforcing, or such acts and proceedings as the states may commit or take, which, by the Amendment, they are prohibited from committing or taking."

Granting that Congress may not directly enact that the Negro shall be allowed to vote in any state, under this power as thus expounded it may at least declare void, for all federal purposes, any provisions of a state law or constitution which it finds to be in violation of the Amendment. The power is a legislative power, to be exercised by legislation. A legislative body proceeds upon facts found or ascertained by itself, to its own satisfaction. It needs no other authority for its action, and if it acts within its constitutional authority, the facts upon which it proceeds

cannot be questioned or its action disturbed. All this must be taken as known and intended in conferring the power. An Act of Congress declaring a law or system of laws, so far as it affects the federal government, to be void for violation of the Amendment, is not constructive but is strictly corrective legislation. It would at once furnish sufficient ground for the House of Representatives to purge itself of members who have no right to be there. It would be the plain duty of the House, notwithstanding it is subject to no control in dealing with its membership, to exclude members elected under a suffrage system found and declared by Congress to be void for violation of the federal Constitution. It would equally be the duty of the two Houses to refuse to count the votes of presidential electors chosen under such a system. This proceeding would compel reformation of the suffrage system of the disfranchising states, under the alternative of possible loss of their whole representation in the lower House of Congress and in the electoral body. Probably it has never been expected that the courage of Congress would rise to this level unless under the stress of some future political exigency, when it might again be found that there is "politics" in the Negro. But there is always politics in the white man, and this is a white man's issue, to be pressed upon the government by white men. Here is a plain remedy, in the hands of Congress. If applied, it cannot justly be complained of. If not applied, every voter in thirty-six states has a right to complain. It goes directly to the end which the Fifteenth Amendment was intended to secure. It does not by any means exhaust the political remedies under this Amendment, but it is enough to suggest the possibilities of the enforcement clause, and to show how formidable a weapon is here placed in the hands of Congress to restore political equality among the citizens of the United States.

Section 2 of the Fourteenth Amendment, the representation clause, is more familiar, but even this has not been fully explored. It declares that if the right to vote is denied "or in any way abridged," except for rebellion or other crime, the basis of representation "shall be reduced" in the same proportion. The penalty is not limited to direct denial of the suffrage. The clause "or in any way abridged" is no less significant and effective than the other. Not merely "denied," not merely "abridged," but for further and complete assurance, "*in any way* abridged," is the law. No secret, covert or sinister scheme, however cunningly contrived, by which abridgement may be effected without direct denial, shall prevail. Nothing could meet the "grandfather" device, or the "understanding" device, more directly than this. It seems as though the framers of the Amendment, with prophetic foresight, had anticipated what now has actually been done, and fitted the Amendment to the facts. Adroitly as the disfranchising constitutions have avoided direct denial of the suffrage to the Negro, it can avail them nothing. Neither court nor Congress could hesitate in finding that the suffrage is abridged to the Negro in the administration of the system, if not directly denied by its terms, and this is violation of the Amendment.

Under this clause there is a complete remedy for disfranchisement in the hands of the House of Representatives by itself. It is not prescribed that *Congress may* reduce the representation of a disfranchising state. Upon denial or abridgement of the suffrage, its representation "shall be reduced." It is judicially declared and settled that the War Amendments are intended to be, and are, of automatic action and self-executing, so far as they can be without the aid of legislation. A plain and conceded purpose of this section is to correct the inequality of the old Constitution by excluding from the

basis of representation any part of the population which is not represented in the electorate; in short, to forbid and prevent any representation of any state not based upon a voting population, the states having the choice to confer the suffrage and have the representation or withhold the suffrage and lose it.

Read in its full meaning, the Amendment prescribes that if a state withholds the suffrage from any class of citizens of the United States its representation shall thereby stand as reduced, *ipso facto,* in the same proportion. A proportionate part of its right to representation ceases to exist, contemporaneously with denial or abridgment of the suffrage, and from that moment it has no constitutional right to send any representatives to Congress, or choose any presidential electors, except such number as may stand upon the reduced basis. Upon finding of the fact of denial or abridgment of the suffrage, the proportionate reduction of representation follows as a necessary consequence. The House of Representatives may find this fact, and deal with representation accordingly, without any concurrent action of the Senate or the Executive.

Every representative sent from a disfranchising state since the disfranchising process began, in excess of this reduced number, has been sent without authority, and has occupied his seat without right or title. The House of Representatives would have been legally warranted, at any time since Mississippi disfranchised the Negro in 1891, in refusing to admit any delegation from a disfranchising state. When such a delegation appears, it is known that its number exceeds the number which the state has a constitutional right to send, and as they all stand upon the same ground and are alike subject to the same infirmity, the House cannot distinguish between them and is not called upon to admit either or any of them. It is for any state to make the title of each of its representatives good, by sending only such number as the Con-

stitution authorizes. A suffrage system in violation of the federal Constitution is, so far as it affects the federal government, void as an entirety, and no representative claiming to be elected under such a system can show a constitutional title to a seat in Congress.

It has heretofore been assumed that reduction of representation under the Fourteenth Amendment can be effected only by an Act of Congress in the form of which Congressman Bennet's bill is the latest example, declaring the number of representatives which each disfranchising state is entitled to elect, and requiring the state to reconstruct its districts accordingly or to elect at large the proper number and no more. While this method of procedure is preferable, especially as it conclusively settles the title of the state to presidential electors no less than to representatives, it is not legally necessary. The House of Representatives has power enough in its own hands.

If these remedies for disfranchisement appear extreme, it is only because the people of the country at large, in their indifference to the fate of the Negro, have overlooked the crime against their own political rights. They are directly within the terms and intent of the Constitution, they are essential to the supremacy of the federal power, they are demanded in order to restore political equality among all the states and all citizens of the United States, and it is the plain duty of the government to apply them. If the power is doubted, as the Supreme Court once said in a similar case, "it is only because the Congress, through long habit and long years of forbearance has, in deference and respect to the states, refrained from the exercise of these powers, that they are now doubted." Action of Congress in this direction, or even a near prospect of it, would bring the disfranchising states to a realizing sense of the danger involved in their open defiance of the organic law. The

men who shaped the War Amendments, and the people who wrote them into the federal charter, could not have conceived that there should ever be any hesitation to enforce them under such conditions as now confront us.

The application of this remedy will at least restore political equality among the states and among the white citizens of the United States, and it will not stop here. It will accomplish what the Fourteenth Amendment was designed to accomplish, by establishing impartial suffrage and equality of political rights among all citizens of the United States without distinction based upon race or color. No state will willingly pay the price of reduced representation for the luxury of depriving all Negroes of the ballot. So long as ten states are allowed, without interference or remonstrance, to enjoy this privilege and at the same time to retain and exercise all the political power of which the disfranchised Negroes are despoiled, they can hardly be expected to surrender it. So long as we remain dumb and subservient, we cannot hold them alone responsible for the consequences.

Here is a plain question, which ought to be put to the country and answered by the country. Are the people of thirty-six states willing to be defrauded of their own political rights in order that ten states may disfranchise the Negro? Have we so fallen from the estate of our fathers that, while they vigorously remonstrated against lawful representation of three-fifths of the Negroes, sanctioned by the Constitution, we will submit to unlawful representation of all the Negroes in defiance of the Constitution? This question, once fairly presented, cannot be put aside until it is settled, and it will not be settled until the political rights of every citizen of the United States are recognized and enforced.

The effective nullification of the Fifteenth Amendment is now followed by a concerted movement to prepare the public mind for its formal abrogation. If

such a movement can succeed, it will not stop with the Fifteenth Amendment, but the representation clause of the Fourteenth will be the next object of attack. With both of these clauses of the Constitution out of the way, they will have the Negro where they want to put him, and they will have us where they want to put us. The president takes notice of this in his inaugural address, where he declares that the Fifteenth Amendment will never be repealed, and that it ought to be "observed." It ought to be enforced. Until enforced it is virtually repealed. It is a part of his official duty to see that it is enforced. Will he do it? He owes the people of the United States an answer to this question. The people owe it to themselves to see that it is answered, and there is but one possible answer.

It is not the part of patriotism or of statesmanship to trifle with this subject. If the organization and control of the House of Representatives should turn upon the thirty-odd votes now unlawfully retained by the white South, the subject would be precipitated into politics in a day, not as a question of principle, or for the assertion of any principle, but upon the lowest level, as a means of perpetuating the power of the dominant party. If a presidential election should turn upon the thirty-odd electoral votes now under the same unlawful control, there would be a struggle for possession of the government to which the contest of 1876 was but a passing breeze. Out of this issue, if forced upon us under such conditions, a storm may arise which will shake the federal structure to its foundations. It is a plain duty to press the subject upon the attention of the country until public sentiment compels the government to act. If deaf to the disfranchised Negro it will hear the disfranchised white man, and the act which takes care of the white man will take care of the Negro.